

**NOT DESIGNATED FOR PUBLICATION**

JOSEPHINE LINKER HART, JUDGE  
DIVISION III

CACR06-1279

June 6, 2007

MEA LASHUN BENNETT  
APPELLANT

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR 04-4025]

V.

HONORABLE WILLARD PROCTOR,  
Jr., CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant, Mea Lashun Bennett, appeals from her robbery conviction, arguing that the State's evidence was insufficient to prove she employed physical force upon the victim named in the felony information, Terry Lingo. We affirm.

At trial, Jennifer Linker, who works security for a Little Rock Wal-Mart store, testified that on August 23, 2004, she observed appellant purchase a DVD player and exit the store. She then saw appellant re-enter the store, obtain a DVD player identical to the one she purchased earlier, and take it to the courtesy desk, where appellant signed for and received a refund. Linker testified that she approached appellant and took her to the security office. According to Linker, appellant was allowed, while being escorted by Wal-Mart employee

Terry Lingo and three other employees, to take a child she had with her to a man who was waiting in the parking lot while Linker remained inside. Linker testified that, while viewing a security monitor, she saw appellant resist when the employees attempted to escort her back to the store. Linker further testified that appellant was carried back into the store by one of the employees. She testified that appellant then “started fisting the guys and she kicked me into the table and that is when I handed over my handcuffs to them and she was actually handcuffed in the room....”

At this point in Linker’s testimony, the State in part asked Linker if she remembered stating, in her written report of the incident for the Little Rock Police Department, that after appellant was handcuffed, appellant kicked Lingo in the leg. Linker replied affirmatively. Counsel for appellant objected, arguing that the State was leading the witness. Immediately after the judge sustained the objection, the State rephrased the question, asking, “Do you recall anything that [appellant] did to [Lingo] after you handcuffed her?” Without objection from appellant’s counsel, Linker testified that “when she kicked me into the table, he was standing next to me and that’s when he got kicked, also. She was using her fists....” She reiterated this testimony on cross-examination, again testifying that appellant kicked both her and Lingo. Linker further testified that appellant was then taken into custody by the police.

Appellant was convicted of robbery, which required proof that appellant, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, employed or threatened to immediately

employ physical force upon another person. Ark. Code Ann. § 5-12-102(a) (Repl. 2006). “Physical force” is defined as “[b]odily impact, restraint, or confinement,” or “[t]hreat of any bodily impact, restraint, or confinement.” Ark. Code Ann. § 5-12-101 (Repl. 2006).

On appeal, appellant argues that the State failed to present sufficient evidence that she employed physical force against the victim named in the felony information, Lingo. She asserts that the evidence was insufficient because the testimony given to that effect—Linker testified that appellant kicked Lingo—was the product of leading questioning that depended heavily upon the prodding of Linker with her written statement.

Essentially, appellant argues that Linker’s testimony establishing that appellant employed physical force against Lingo should not be accorded much weight and is therefore insufficient. Appellant’s argument, however, is unavailing, as it is well-settled that it is the province of the fact-finder to determine the weight of evidence and the credibility of witnesses. *See, e.g., Johnson v. State*, 337 Ark. 196, 987 S.W.2d 694 (1999).

Further, to the extent that appellant argues that the evidence was insufficient because Linker’s testimony was improperly admitted, appellant misapprehends our review of a challenge to the sufficiency of the evidence. In determining the sufficiency of the evidence, an appellate court reviews all of the evidence introduced at trial, whether correctly or erroneously admitted, and if, after considering all of the evidence, whether correctly or erroneously admitted, the party having the burden of proof failed to prove its case by the appropriate standard, the case is reversed and dismissed. *See Eichelberger v. State*, 323 Ark.

551, 916 S.W.2d 109 (1996). If substantial evidence was presented, but prejudicial trial error occurred, the case is reversed and remanded. *Id.* Linker's testimony established that appellant employed physical force against Lingo. And appellant did not argue at trial that the testimony Linker gave following appellant's sustained objection was improperly admitted or argue in a separate point on appeal that this testimony was improperly admitted. Consequently, we affirm appellant's robbery conviction.

Affirmed.

GRIFFEN and GLOVER, JJ., agree.